

EPPING FOREST DISTRICT COUNCIL

and

DEMETRIOS GEORGIU DEMITRIOU

and

VASOULLA DEMETRIOU

and

THE MORTGAGE BUSINESS PLC

**DRAFT
AGREEMENT**

**made under Section 106 of the Town and Country
Planning Act 1990 (as amended)**

**Land at 92 Crooked Mile Waltham Abbey
Essex EN9 1QN**



**Epping Forest District Council
Civic Offices
High Street
Epping
Essex CM16 4BZ**

Reference: CSS/RR/TP/3/9/668

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THIS DEED is made the

day of

2008

B E T W E E N :

1. **EPPING FOREST DISTRICT COUNCIL** of Civic Offices High Street Epping Essex CM16 4BZ of the first part (herein referred to as the "Council")
2. **DEMETRIOU GEORGIU DEMETRIOU and VASOULLA DEMETRIOU both** of 92 Crooked Mile Waltham Abbey Essex EN9 1QN (hereinafter together referred to as the "Developer")
3. **THE MORTGAGE BUSINESS PLC** a company registered in England and Wales under Company Registration Number 1997277 whose registered office is at Trinity Road Halifax West Yorkshire HX1 2RG of the third part (hereinafter referred to as the "Mortgagee")

RECITALS

1. The Developer wishes to construct the Development pursuant to the Planning Permission upon the Site
2. The Developer is the freehold owner of the Site in possession as the same is registered with Title Absolute under Title Number(s) EX699822 and EX207461 at H.M. Land Registry free from encumbrances
3. The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990
4. The Council is the Local Planning Authority by whom the obligations contained in this Deed are enforceable
5. The parties to this Deed are satisfied that the restrictions and provisions contained in this Deed are relevant to planning considerations concerning the Site, fairly and reasonably relate to the Development, fairly and reasonably relate in scale and kind to the Development and are reasonable in all respects
6. Having regard to the provisions of the Local Plan and the planning considerations affecting the Site the Council considers that the Development ought only to be permitted subject to the terms hereof

NOW THIS DEED WITNESSETH:

1. Definitions and Interpretation

1.1 The following words and phrases shall unless the context otherwise requires bear the following meanings:

“Acts”	Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 and in each case any statutory amendment variation substitution or re-enactment thereof together with all other statutory powers and Acts pursuant to which the parties hereto shall be empowered to enter into this Deed
“Application”	Application for planning permission reference number EPF/2358/2007 received by the Council for permission to carry out the Development upon the Site
“Council”	the party of the first part hereto which shall include its successors and assigns from time to time
“Developer”	the parties of the second part which shall include their successors and assigns from time to time
“Development”	Demolition of Conservatory for provision of double storey side extension to create care unit extension to family home
"Director of Planning and Economic Development"	the Council's Director of Planning and Economic Development or any other officer or person properly exercising the authority of the Director of Planning and Economic Development for the time being or any other officer or person appointed by the Council to act on its behalf
“Extension”	the double storey side extension the subject of the Application
“Implementation”	means implementation of the Permission by the carrying out of any material operation within the meaning of Section 56(2) and (4) of the Town and Country Planning Act 1990 and “ Implement ” and “ Implemented ” and cognate expressions will be interpreted in

accordance with this definition

"Mortgagee"	the party of the third part which shall include its successors in title and assigns from time to time
"Plan"	the site plan annexed hereto
"Permission"	planning permission in the form of the draft annexed hereto as Schedule 1
"Site"	as the same is shown edged red on the Plan

- 1.2 Any covenant by the Developer or the Council not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred
- 1.3 Any references to any particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it
- 1.4 Where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed
- 1.5 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed
- 1.6 Where reference is made to a clause, part, plan, paragraph, recital or schedule such reference (unless the context requires otherwise) is a reference to a clause, part, plan, paragraph, recital or schedule of or to (or in the case of Plan attached to) this Deed
- 1.7 The Council will on written request from the Developer and on payment of its reasonable costs and expenses certify whether or not an obligation under this Deed has been satisfied

2. Planning Obligations

This Deed is made pursuant to the Acts and both the positive and restrictive covenants and undertakings herein on the part of the Developer are entered into with the intent that the same shall be enforceable without limit of time not only against the Developer but also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Developer an interest or estate created hereafter in the Site or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person

3. Entry into Force

This Deed shall come into effect upon delivery hereof and the grant of the Permission

4. No Encumbrance

The Developer HEREBY COVENANTS with the Council that they will not enter into any covenants or agreement relating to any part of the Site whose effect would be to preclude the carrying out of the planning obligations and covenants contained in this Deed

5. General Provisions

IT IS HEREBY AGREED AND DECLARED that:

5.1 The covenants on behalf of the parties hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered at the Local Land Charges Registry for the purpose of the Local Land Charges Act 1975; and

5.2 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions and the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if it were not a party to this Deed

5.3 The Developer hereto hereby agrees to observe and perform the covenants set out in Schedule 2 hereof

5.4 Nothing in this Deed shall be construed as granting permission to the Developer or his agents or servants from time to time to carry out works on a highway for which the Council is the highway authority or acting as or agent for the highway authority

6. No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Developer in performing or observing any of the covenants undertakings obligations or restrictions contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Developer

7. Interest

Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if any payment which is due to the Council under the terms of this Deed and is made later than the date such payment is due shall attract interest at the Local Authority Seven Day Deposit Rate from the date payment was due until the payment is received by the Council

8. Severability

Each clause sub-clause schedule or paragraph shall be separate distinct and severable from each other to the extent only that if any clause sub-clause schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause sub-clause schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause schedule or paragraph be valid shall apply without prejudice to any other clause sub-clause schedule or paragraph contained herein

9. Verification and Enforcement

9.1 The Developer shall permit the Council and its authorised employees and agents upon reasonable notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed

9.2 Without prejudice to the terms of any other provision herein the Developer shall pay the reasonable legal charges and expenses (including without prejudice to the generality thereof reasonable legal costs and reasonable Surveyor's fees) incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or of any obligation of the Developer arising hereunder

9.3 Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if there is a breach of a requirement in a planning obligation herein to carry out any operations in on under or over the Site the Council may:

- (a) Enter the Site and carry out the operations; and
- (b) Recover from the Developer any expenses reasonably incurred by the Council in doing so as a debt due and owing

9.4 Before the Council exercises its power under Clause 9.3 hereof it shall give not less than 21 days notice of its intention to do so to the Developer

10. Variation

No variation to this Deed shall be effective unless made by deed or pursuant to the determination of an application made under section 106A of the 1990 Act

11. Resolution of Disputes

11.1 In the event of any dispute between the parties hereto any party may invite any other party to resolve the dispute by mediation in such manner as the parties may agree

11.2 In the event of a dispute between the parties (other than a dispute relating to a matter of law or in relation to the interpretation of this Deed) the parties agree that the matter in dispute will on the application of either of them be referred to a Surveyor acting as an expert (hereinafter referred to as the "Expert") (being a member of the Planning Division of the RICS with not less than ten years recent experience in the field of town and country planning and development) whose identity will be agreed between the parties or in default of agreement appointed by or on behalf of the President for the time being of the RICS on the application

of any party and it is further agreed that:

11.2.1 the determination of the Expert will be final and binding on the parties save in the case of manifest error

11.2.2 the parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct and

11.2.3 the Expert's costs will be borne in such proportions as he may direct failing which each party will bear its own costs of the reference and determination and one-half each of the Expert's costs

12. Notices

Any notice to be served in accordance with this Deed shall be validly served if served in accordance with Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 except that

12.1 any notice to be served on the Council shall be addressed to the Director of Planning and Economic Development or such other person as the Council shall have previously notified the other party in writing and shall quote the reference number referred to in the definition of "Application" in Clause 1.1 hereof

12.2 any notice to be served on the Developer shall be addressed []

13. Developer's actions on exchange

The Developer will on exchange of this Deed pay the Council's reasonable legal costs incurred in the negotiation and preparation of this Deed

14. Council's Actions on Exchange

14.1 To register this Deed as a Local Land Charge

14.2 To issue the Permission as soon as practicable

15. Deed governed by English Law

This Deed is subject to and will be construed in all respects in accordance with the provisions of English law

16. Third Parties

Without prejudice to the definitions of the “Council” the “Developer” and the “Mortgagee” given in Clause 1.1 hereof it is not intended that this Deed should give rights hereunder to a third party arising solely by virtue of the Contract (Rights of Third Parties) Act 1999

17. Mortgagee

17.1 The Mortgagee has by deed dated 18 May 2004 a mortgage over the Site

17.2 The Mortgagee joins herein to consent to the terms of this Deed but without liability save in the event that it become successors in title to the Developer before the obligations contained in this Deed have been performed in full

IN WITNESS whereof the parties hereto have executed this deed the day and year first before written

SCHEDULE 1
("Draft Planning Permission")

SCHEDULE 2

The Developer hereby covenants with the Council as follows:

1. that the Extension must be used solely as accommodation ancillary to the existing dwellinghouse and must not be occupied or be used for any purpose independent of the existing dwellinghouse.
2. that the Extension must not be severed from or sold leased or let separately from the existing dwellinghouse
3. that the connecting internal doorway between the Extension and existing dwellinghouse as shown on approved drawing C.H.3c must be provided prior to the Extension being occupied and the doorway must be retained in perpetuity without obstruction and any door within the doorway must not be permanently locked or fixed shut

THE COMMON SEAL OF)
EPPING FOREST DISTRICT COUNCIL)
was hereunto affixed)
in the presence of:)

Attesting Officer

SIGNED AS A DEED)
by the said **DEMITRIOS**)
GEORGIU DEMITRIU)
in the presence of:)

SIGNED AS A DEED)
by the said **VASOULLA DEMITRIU**)
in the presence of:)

EXECUTED AS A DEED)
by the said **THE MORTGAGE**)
BUSINESS PLC (Reg Co No: 1997277))
in the presence of:)

Director

Secretary